Filed 5/18/10 In re Z.F and I.F. CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Z.F. and I.F., Persons Coming Under the Juvenile Court Law.	2d Juv. No. B218762 (Super. Ct. No. J1285479, J1285480) (Santa Barbara County)
CHILD WELFARE SERVICES, Plaintiff and Respondent, v. R.F., Defendant and Appellant.	

R.F. appeals from the order terminating his parental rights to Z.F., born in November 2006, and I.F., born in January 2008. (Welf. & Inst. Code, § 366.26.)[1] He contends the trial court erred when it found that the Indian Child Welfare Act (ICWA) (25 U.S.C.A. § 1911, et seq.) did not apply to these proceedings because the notice provided by respondent to relevant Indian tribes did not comply with ICWA. Respondent has moved to augment the record with copies of a supplemental ICWA notice sent, and responses received from tribes after the order terminating parental rights was entered. The motion to augment is granted. (Cal. Rules of Court, rule 8.155; *In re Christopher I.*

[1] All statutory references are to the Welfare & Institutions Code unless otherwise stated.

(2003) 106 Cal.App.4th 533, 562-563.) Like the trial court, we conclude that the supplemental notice complied with ICWA because it adequately identified the children's paternal grandparents and great-grandparents. After receiving that information, the noticed tribes determined the children are not eligible for membership. That determination is conclusive. Because respondent remedied its initial, defective notice by providing the supplemental notice we conclude the prior error was harmless and affirm.

Facts

Z.F. and I.F. were removed from the custody of their father, appellant R.F. after he left them for six days at the home of his girlfriend's grandmother. They have been living in foster care with their paternal grandparents since the summer of 2008. After the trial court assumed jurisdiction over the children, appellant made no meaningful progress in complying with his case plan. He did not maintain a suitable residence for himself, complete a mental health assessment, or participate in parenting classes or substance abuse treatment. Instead, R.F. violated the terms of his parole and returned to prison in December 2008. He was released from prison on May 18, 2009.

At the detention hearing in July 2008, appellant asserted that he is of Native American heritage. Respondent distributed notice of the proceedings to the Bureau of Indian Affairs (BIA), the tribe identified by appellant, and to several related tribes. Unfortunately, the notice was inadequate because it contained little information indentifying the children's grandparents or great-grandparents. All of the tribes concluded the children were not members or eligible for membership. As a result, none of the tribes intervened in the proceedings.

On February 2, 2009, the trial court found that appellant and the children's biological mother had made minimal progress toward reunification and that the children's continued placement in foster care was required. It terminated reunification services for appellant and set the matter for a hearing on the termination of his parental rights pursuant to section 366.26. Appellant petitioned for extraordinary writ review of that order. We denied the writ petition on June 17, 2009. (No. B214071.)

At the section 366.26 hearing on July 30, 2009, the trial court terminated appellant's parental rights. This appeal followed.

Appellant's opening brief raises as its sole issue the defective ICWA notice. On December 2, 2009, after obtaining additional identifying information for the children's grandparents and great-grandparents, respondent served another ICWA notice on the BIA and relevant tribes. This supplemental notice contains the names, dates of birth, places of birth and possible tribal affiliations of the children's paternal grandparents and great-grandparents. By early February 2010, all of the noticed tribes had responded that the children are not members or eligible for membership.

At a hearing on February 8, 2010, the trial court found that the supplemental ICWA notice was adequate and reiterated its earlier determination that ICWA does not apply to these proceedings. The permanent plan of adoption that had been selected for the children was continued. Their placement with their paternal grandparents, who are also their prospective adoptive parents, continues. The trial court scheduled a hearing in August 2010 to finalize their adoption.

Discussion

Appellant contends the order terminating his parental rights should be reversed because the original ICWA notices did not contain enough information to permit tribes to determine the children's membership status. ICWA requires that notice of dependency proceedings be sent to all tribes of which a child is a member or may be eligible for membership. (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 384.) Notices must contain enough information about the child's ancestors to be meaningful. (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.) These requirements are strictly construed because, without proper notice, tribes cannot determine a child's eligibility for membership or decide whether to intervene in a dependency proceeding. (*In re J.T.* (2007) 154 Cal.App.4th 986, 994; *In re Samuel P.* (2000) 99 Cal.App.4th 1259, 1267.) Tribal determinations of a child's membership and eligibility are conclusive. (*In re Robert A.* (2007) 147 Cal.App.4th 982, 988.)

The original ICWA notice identified the children's biological parents and their paternal grandmother but contained no other information about their ancestors. This notice did not comply with ICWA notice requirements because it did not contain sufficient identifying information to permit the tribes to determine whether the children were members or eligible for membership. (*In re Brooke C., supra,* 127 Cal.App.4th at p. 384.) However, the remedy for defective ICWA notice is "reversal and remand to the juvenile court so proper notice can be given." (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 850.) Here, appellant and the children have already had the benefit of that remedy: respondent voluntarily undertook to provide the relevant tribes with additional information identifying the children's parental grandparents and great-grandparents. The supplemental notice was sufficient to comply with ICWA requirements. As a result, defects in the original notice have been cured and appellant has suffered no prejudice. The error in the original notice has been rendered harmless. (*Id.* at p. 385; *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1411-1412 [untimely notice harmless error where no evidence of Indian heritage was discovered].) The tiral court correctly concluded that ICWA does not apply because the children are not Indian children within the meaning of the statute.

Conclusion

The judgment (order terminating parental rights) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

COFFEE, J.

James E. Herman, Judge

Superior Court County of Santa Barbara

Lee S. Guliver, under appointment by the Court of Appeal, for Appellant.

Dennis A. Marshall, County Counsel, County of Santa Barbara, Toni Lorien,Deputy, for Respondent.